

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

UNITED STATES OF AMERICA,	:	CASE NO. 1:95-CR-125
	:	
Plaintiff,	:	
	:	
	:	JUDGE DAN A. POLSTER
vs.	:	
	:	
ANDRE BADLEY,	:	<b><u>UNOPPOSED AND SUPPLEMENTAL</u></b>
	:	<b><u>MOTION FOR REDUCED SENTENCE</u></b>
	:	<b><u>PURSUANT TO THE FIRST STEP</u></b>
Defendant.	:	<b><u>ACT</u></b>

Defendant Andre Badley previously filed a motion for imposition of a reduced sentence pursuant to Section 404 of the First Step Act. Dkt. 247. Since that filing, the defense and the government have discussed Mr. Badley's motion, and the government agrees Mr. Badley is eligible for a sentence reduction. Therefore, he now files a supplemental motion detailing the terms the defense and the government agree upon as to Mr. Badley's eligibility for a sentence reduction under Section 404 of the First Step Act.

Respectfully submitted,

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Federal Public Defender  
Ohio Bar: 0051928

/s/ Jeffrey B. Lazarus  
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Attorney for Andre Badley

**MEMORANDUM**

Defendant Andre Badley was indicted on March 21, 1995 for violation of two counts of drug charges. Count One alleged violation of 21 U.S.C. § 841(a)(1), (b)(1)(A) and concerned the possession with intent to distribute more than 50 grams of crack cocaine. Count Two alleged violation of 21 U.S.C. § 21 U.S.C. § 841(a)(1), (b)(1)(C), and involved the possession with the intent to distribute powder cocaine. Dkt. 6. On June 18, 1997, he was found guilty by jury of both counts of the indictment. Dkt. 116. Regarding Count One, he was alleged to have possessed 114.33 grams of crack cocaine, under 21 U.S.C. § 841(a)(1), (b)(1)(A). Based on the offense of conviction, Mr. Badley was subject to a statutory term of ten years to life. Because he had two prior felony drug convictions, his statutory sentencing penalty was increased to mandatory life in prison. *See* 21 U.S.C. §§ 841(b)(1)(A), 851 (1995). On September 18, 1997, the Honorable David D. Dowd sentenced Mr. Badley to life imprisonment, to be followed by five years of supervised release. Dkt. 128, p. 3. Mr. Badley has been incarcerated since February 28, 1995 and has served more than 24 years of imprisonment, in fact, 287 months.

On January 7, 2019, Mr. Badley filed a motion for sentence reduction under the First Step Act. Dkt. 247. The government now agrees that Mr. Badley is eligible for a sentence reduction under Section 404 of the First Step Act. The defense and the government have conferred, and believe that Mr. Badley is eligible for a reduction on the following terms.

The parties agree that under the First Step Act and the Fair Sentencing Act, his offense in Count One involving 114.33 grams of crack cocaine now subjects him to a statutory term of five to forty years under 21 U.S.C. § 841(b)(1)(B) (2019). Because the government filed a notice of prior conviction, under 21 U.S.C. § 851, Mr. Badley's statutory range is increased to ten years of life. 21 U.S.C. §§ 841(b)(1)(B), 851 (2019). Accordingly, while Mr. Badley was originally

subject to a term of mandatory life, he is now subject to a mandatory minimum sentence of ten years. As to Count Two, his offense's statutory range is unaltered and remains a statutory range of zero to twenty years.

Further, Mr. Badley's advisory sentencing range under the Guidelines has been reduced. Mr. Badley's offense involving 114.33 grams of crack cocaine results in a base offense level of 26. U.S.S.G. § 2D1.1(c)(7) (offenses involving between 112 and 196 grams of crack cocaine). There are no additional guideline enhancements or reductions, and his total offense level is 26. Mr. Badley remains a Criminal History Category VI. *See* PSR at ¶ 40. Thus, his resulting sentencing guideline range is 120 to 150 months of imprisonment.

The parties agree Mr. Badley should be resentenced to a term of imprisonment at the low-end of his new sentencing guideline range. As Mr. Badley has been incarcerated since February 28, 1995 and has served more than 24 years of imprisonment; the parties jointly request this Court grant this reduction so that he can be immediately released, and begin his term of supervised release.

While Mr. Badley's original motion, Dkt. 247, requested this Court order a full re-sentencing hearing, based on the agreement by defense counsel and the government as to Mr. Badley's eligibility, he withdraws his request for a full re-sentencing hearing, and requests this Court rule on the request for reduction based on the written pleadings. If, however, this Court wants to have a hearing on the motion for reduction, Mr. Badley requests the Assistant United States Attorney be directed to file the appropriate writ to have the U.S. Marshalls transport Mr. Badley for this hearing immediately.

Regarding supervised release, the original judgment ordered for Mr. Badley to be given a supervised release term of five years. Dkt. 128, p. 3. Because he is now subject to the penalties

set forth in 21 U.S.C. § 841(b)(1)(B), his new supervised release term, with consideration of his prior conviction, should be eight years.

In order for the Bureau of Prisons to properly and efficiently process any reduction given by this Court, Mr. Badley requests this Court issue a new judgment and commitment order detailing the terms set forth in this motion, that being a term of imprisonment of 120 months as to Count One and Count Two, to be served concurrently, with credit for time served dating back to February 28, 1995, and to be followed by a term of supervised release of eight years.

Defense counsel has spoken with representatives of the United States Attorney's Office, and the government has no opposition to this motion.

Respectfully submitted,

STEPHEN C. NEWMAN  
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/s/ Jeffrey B. Lazarus

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 13, 2019, a copy of the foregoing Supplemental Motion was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Jeffrey B. Lazarus

JEFFREY B. LAZARUS

Assistant Federal Public Defender